

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

NOTICE

August 5, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-1153

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

**MILWAUKEE AREA TECHNICAL COLLEGE AND
MILWAUKEE AREA TECHNICAL COLLEGE DISTRICT
BOARD,**

PLAINTIFFS-RESPONDENTS,

V.

GERHARDT J. STEINKE,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: MICHAEL J. BARRON, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Schudson, JJ.

PER CURIAM. Gerhardt Steinke appeals from the trial court's order granting the Milwaukee Area Technical College (MATC) a permanent injunction enjoining him from visiting its campuses and harassing its employees. He also

appeals from the trial court's judgment awarding MATC costs and damages. We affirm.

In March 1990, MATC terminated Steinke's employment as a teacher. Following his termination, Steinke contacted MATC employees with numerous disruptive visits, countless faxes, and multiple lawsuits. In response, MATC brought an action seeking money damages and a permanent injunction to prevent Steinke from visiting any of MATC's campuses unless he met numerous conditions to assure that his visits would be safe and orderly, and from harassing any of its employees. In August 1994, following a hearing on the matter, the trial court granted MATC's motion for a preliminary injunction against Steinke.

Following the preliminary hearing, Steinke, *pro se*, moved for substitution of judge. The trial court denied the motion as untimely. Steinke then objected to the preliminary injunction hearing on the ground that it took place more than seven days after the issuance of an *ex parte* temporary restraining order, contrary to the provisions of § 813.125, STATS. The trial court again denied Steinke's objection and entered the written preliminary injunction order. Five days later, Steinke objected to the order and moved for reconsideration. The court denied his motion, and the matter was scheduled for trial.

Prior to trial, MATC moved for a protective order and a finding of contempt for Steinke's failure to comply with the preliminary injunction. On February 6, 1996, the trial court heard arguments from both MATC and Steinke and concluded that Steinke was in contempt of court for having violated the preliminary injunction. The court then modified the preliminary injunction to bar Steinke from (1) sending MATC's present or former attorneys copies of papers

concerning matters on which those attorneys were not working, and (2) sending written communications to MATC by means other than U.S. mail or messenger.

On March 4, 1996, the day of trial, Steinke failed to appear in court. MATC was present and was prepared to proceed. Accordingly, the trial court entered an order for default judgment awarding MATC money damages and a permanent injunction prohibiting Steinke from making uncontrolled visits to MATC campuses and from harassing MATC employees. On April 23, 1996, a final judgment was entered, awarding \$2,188.40 to MATC.

Steinke claims that the injunction violates his constitutional rights to procedural and substantive due process and his rights under the First Amendment. We decline to address these claims because Steinke failed to move the trial court to vacate the default judgment.

The record reveals that on the day of trial Steinke, without offering any explanation, failed to appear. The record also reveals that Steinke never requested a continuance. Further, after the trial court granted default judgment in favor of MATC, Steinke made no attempt to have the trial court vacate the judgment. *See* § 806.07(1) & (2), STATS. Therefore, Steinke waived his right to challenge the grant of the default judgment on appeal to this court. *See Olson v. Dunbar*, 149 Wis.2d 213, 218-19, 440 N.W.2d 792, 794 (Ct. App. 1989) (failure to move to reopen default judgment constitutes waiver of issues raised on appeal).

Steinke claims, however, that the injunction prohibited him from seeking to vacate the default judgment before the trial court. He points to paragraph 11 of the injunction which provides: "Steinke may submit to this Court, no earlier than two (2) years from the date of this Order, a motion to modify or rescind this Order." We do not read this language as precluding Steinke from

challenging the trial court's default judgment. Moreover, Steinke's claim that he thought this provision prohibited him from doing so is undermined by the fact that, after the trial court granted the preliminary injunction containing the same provision as that in paragraph 11, Steinke petitioned the trial court for reconsideration of its earlier rulings. Thus, Steinke apparently understood that he could seek relief from the trial court despite this provision. Accordingly, we "are unpersuaded that justice would be served" by entertaining Steinke's arguments where the trial court was not afforded the opportunity to do so. *See id.*

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

